IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1106 OF 1992

The State of Maharashtra
through the Special Land Acquisition
Officer, Irrigation No.I, Nasik .. **Appellant**
(Original opponent)

..**versus**.

Narayan Trimbak Pujari
resident of Vaghlud, Tq. Dindori,
deceased his heirs:-

1. Shantabai Narayan Pujari,
   age 41 yrs.

2. Balasaheb Narayan Pujari,
   age 31 years,

3. Dilip Narayan Pujari,
   age 35 years,

4. Pramod Narayan Pujari,
   age 33 years,

5. Avinah Narayan Pujari,
   age 31 years,

6. Achut Narayan Pujari,
   age 29 years,

7. Smt. Mangla Ganpat Pande,

age 41 years
8. Smt. Jyoti J. Pandit,
age 21 years,

9. Smt. Jotsna Anant Joshi,
age 19 years,

10. Miss. Arati Narayan Pujari. .. **Respondent (Original opponent)**

Mr. Bharat Mehta, A.G.P. For the Appellant.
None for the Respondent.

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Coram : K.J. Rohee, J.

Reserved on : 12th April, 2006.

Pronounced on : 19th April, 2006.

Judgment :

The State has preferred this appeal against the order of review passed by Joint District Judge, Nasik in Review Application No. 163/1986 on 18.9.1991.

2. Almost all facts are admitted. The respondent/original claimant (hereinafter referred to as "the claimant") owned Gat No.100 of village Vaghlud, taluka Dindori, District Nasik. An area of 1 Hectare 1 R. out of the said gat number was acquired by the State for submergence of Ozerkhed Dam. The preliminary notification under Section4 (1) of the Land Acquisition Act, 1894 was published on

4.9.1975. The Land Acquisition Officer passed award on 2.4.1979 awarding total compensation of Rs. 4923.75 ps. and solatium @ 15% on the market price of Rs.4875/-. Feeling aggrieved by the said award, the claimant filed an application under Section 18 of the Land Acquisition Act for reference. Accordingly reference was made and in Reference No. 189/1980 award was passed on 23.2.1984 by the Reference Court awarding additional amount of compensation amounting to Rs. 2651.25 ps and solatium thereon at 15 % and interest @ 4 %.

3. Thereafter the Land Acquisition Act 1894 was amended by Land Acquisition (Amending) Act of 68 of 1984, by virtue of which additional benefits were provided to the claimant in respect of whose land acquisition proceedings were pending on 30.4.1982. Hence the claimant moved review application for grant of those benefits.

4. The Reference Court allowed the said application by its order dated 18.9.1991 and corrected the award passed by it on 23.2.1984. The present appeal is directed against the said order.

5. I have heard Mr. Bharat Mehta, Assistant Government Pleader, for the appellant. None for the claimant.

6. The learned A. G. P. for the appellant/State vehemently urged that there was no clerical or arithmetical mistake or error in the award passed by the Reference Court which could have been corrected under Section 152 of the

Code of Civil Procedure. The learned A. G. P. submitted that the Reference Court has travelled beyond the scope of Section 152 of the Code of Civil Procedure and has written a fresh judgment and award which is not sustainable under Section 152 of the Code of Civil Procedure. The learned A. G. P. further submitted that there were no grounds for review of the award under Order 47 Rule 1 of the Code of Civil Procedure and hence the Reference Court was not justified in amending the award.

7. It may be noted that the review application moved by the claimant before the Reference Court no where mentions that it is an application under Section 152 of the Code of Civil Procedure. The application simply shows that because of the Amending Act No. 68 of 1984, the claimant is entitled to additional benefits and prayed for grant of those benefits. It is only in the order of review passed by the Reference Court wherein the opening sentence shows that this is an application under Section 152 of the Civil Procedure Code for correction of arithmetical calculations of the award. Apparently this statement in the impugned order is incorrect.

8. Section 114 and Rule 1 of Order 47 of the Code of Civil Procedure empowers a person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred and for any sufficient reason desires to obtain a review of the decree passed or order made, to apply for review of the

judgment to the Court which passed the decree or made the order. According to the claimant the Land Acquisition (Amending) Act of 1984 came into force with effect from 24.9.1984 whereas the Reference Court had passed the award on 23.2.1984. Apparently the claimant was not aware of the proposed amendment. Hence he could not make prayer for the additional benefits granted by amended sections 23 (1-A), 23(2) and 28.

9. In **State of Haryana .vs. Shanti Parshad Jain and ors. - (1995) 4 Supreme Court Cases 532** it has been made clear that the benefit of amended Section 23 (1-A) is available only to the award made after 30.4.1982 and the benefit of amended Section 23(2) or Section 28 cannot be granted unless the award was made between 30.4.1982 and 24.9.1984.

10. In the present case, the award by the Reference Court was passed on 23.2.1984. As such the claimant is perfectly entitled to the benefits of amended Section 23(1-A), Section 23(2) and Section 28 of the Land Acquisition Act.

11. The above discussion would demonstrate that the application moved by the claimant for extending him the benefits of the Amended Act is perfectly tenable under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure.

12. The learned A. G. P. fairly admitted that the

calculations made by the Reference Court in view of the amended provisions of Section 23 (1-A), 23(2) and Section 28 of the Land Acquisition Act are correct.

13. Thus I find no reason to interfere with the impugned order. The appeal, therefore, deserves to be dismissed. Hence I pass the following order:

ORDER

The appeal is dismissed with costs.

(K. J. Rohee, J.)

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